

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6247 OF 2007

Vijay G.Tambe Petitioners

Versus

Shrikant G.Ambekar Respondents

G.S.Godbole, Adv. for the petitioners.

S.U.Dhakephalkar, Adv for respondent no.1.

Mr.Anilkumar Patil i/by.S.S.Patwardhan
for respondent nos. 6(2)-1 and 3.

CORAM: S.C.DHARMADHIKARI, J.

21.11.2007

P.C. :

1. The trial court's order during the course of deciding the preliminary issue are under challenge. The orders pertain to exhibiting the documents on record of the suit.

2. Exhibits 130 and 131 were decided by the trial

court by passing orders on the said application and during the course of the same directing that the documents at Serial No. 2, 3 and 5 are exhibited. As far as Documents at Serial No.6, 9, 13, 15, 19 and 20 so also at Serial No.25, 26 and 27 are concerned, the Trial court refused to exhibit them. There are certain other documents which are admitted and those are duly referred to in the order passed. This is a common order below Exhibit 130 and 131.

3. The grievance made before me is that the documents which were directed not to be exhibited indeed could have been exhibited as their existence is not in dispute. They have also been referred to in the pleadings of the parties. That apart, this is not a issue which the parties would agitate seriously because ultimately with regard to their contents, unless opportunity to cross-examine with regard thereto is granted or afforded, there is no question of the same being read in evidence. To that limited extent both parties are Ad-Idem. Therefore, having perused the orders passed below these applications and taking into account the nature of documents, I am of the view that

the application made (Exhibit 130 and 131) should have been granted in full and all documents referred to therein ought to have been exhibited on record subject, however, to the right of the respondent no.6 and other contesting parties to cross-examine the witnesses with regard to their contents. It goes without saying that merely because the documents are taken on record and marked as exhibits, that does not mean that their contents are automatically proved. That would be taken as proved only after the parties are proper and adequate opportunity to cross-examine the witness. Keeping these rights so also the opportunities regarding the same intact, all documents which are referred to in Exhibit 130 and 131 would now be marked as exhibits. The petition stands allowed accordingly. Needless to state that this court has not gone into the rival contentions on the merits of the controversy and also the contents of the documents. They are kept open for being urged during the course of the trial. The impugned orders stand modified and substituted accordingly. No costs.

(S.C.DHARMADHIKARI, J)